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COUNTY OF ALAMEDA

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 LISAMARIA MARTINEZ,

13 Plaintiff,

14 v.

15 COUNTY OF ALAMEDA,

16 Defendant.

Case No. 20-cv-06570-TSH

**DEFENDANT COUNTY OF ALAMEDA'S
OPPOSITION TO PLAINTIFF LISAMARIA
MARTINEZ'S MOTION *IN LIMINE* NO. 4 TO
LIMIT EXPERT TESTIMONY OF
DEFENDANT'S EXPERT CRIS VAUGHAN**

PTC: February 22, 2024

TIME: 10:00 a.m.

DEPT: Courtroom G, 15th Floor

JUDGE: Hon. Thomas Hixson

TRIAL: March 25, 2024

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Defendant COUNTY OF ALAMEDA (“Defendant” or “County”) hereby submits its Opposition to the Motion *in Limine* No. 4 (“Motion” or “Plaintiff’s MIL 4”), filed by Plaintiff LISAMARIA MARTINEZ (“Plaintiff”), which seeks to limit “the testimony of Defendant’s expert Cris Vaughan in order to exclude those of his conclusions of law that go too far and impermissibly usurp the role of the judge to explain the law, including legal terms of art, to the jury.” Plaintiff’s MIL 4, at 1:3-7. Specifically, pursuant to Federal Rules of Evidence 702, Plaintiff contends that Mr. Vaughan, based upon his report, should be precluded from opining upon “legal conclusions ... along with similar legal opinion testimony ...” Plaintiff’s MIL 4, at 2:11-12. Should the Court agree, the County requests that the County’s Motion *in Limine* No. 3, which makes an identical argument relative to Plaintiff’s expert witnesses, be granted as well, and that all expert witnesses and testimony be excluded from trial. To the extent any expert testimony is permitted, it should be limited to opinions explored and elicited through hypothetical questioning only.

I. SUMMARY OF ARGUMENT AND KEY FACTS

Plaintiff, a disability-rights activist with a vision disability, claims to have been subjected to disability discrimination on March 29, 2019, by employees of the County Clerk-Recorder’s Office (“CRO”), when Plaintiff sought to file a Fictitious Business Name Statement (“FBNS”) at the CRO’s physical office in Oakland, California. Specifically, and despite the fact Plaintiffs’ own recordings of the incident reflect fluent communications between Plaintiff and the County’s employees, Plaintiff alleges that the County failed to provide Plaintiff with an auxiliary aid or service, in the form of “scribe services,” which Plaintiff claims was necessary to ensure “effective communication” between Plaintiff and the County and for Plaintiff to enjoy the benefits of the CRO’s programs, services, or activities. Plaintiff brings suit for disability discrimination under the ADA and derivative state statutes.

As noted, Plaintiff’s MIL 4 seeks to limit “the testimony of Defendant’s expert Cris Vaughan in order to exclude those of his conclusions of law that go too far and impermissibly usurp the role of the judge to explain the law, including legal terms of art, to the jury.” Plaintiff’s MIL 4, at 1:3-7. While the County does not disagree that expert witness testimony should be precluded if it amounts to legal conclusions, that standard must be applied equally to Plaintiff’s expert witnesses as well, as argued in the County’s Motion *in Limine* No. 3 (“County’s MIL 3”). Indeed, it is for this reason that the County believes all expert witnesses and expert

witness testimony should be excluded from trial. To the extent expert witness testimony is allowed, it must be limited to opinions explored and elicited through hypothetical questioning.

II. ALL EXPERT WITNESSES AND TESTIMONY SHOULD BE EXCLUDED OR EXTREMELY LIMITED

The County does not disagree with the sentiment set forth in Plaintiff's MIL 4. In fact, the County's MIL 3, which seeks to exclude the testimony of Plaintiff's expert witnesses, advances an identical argument. See County's MIL No. 3 to Exclude Improper Expert Testimony and Opinions, at 4:12-5:15, 7:1-10:18. The County does not dispute that expert witness testimony should be precluded where it amounts to legal conclusions and usurps the province of the Court and jury. However, this standard must be applied equally to Plaintiff as it is the County. It is for this reason the County believes all expert witnesses and corresponding testimony should be excluded from trial, as the parties' respective motions *in limine* make clear that the proffered evidence does not fit within the confines of proper expert testimony. To the extent any expert testimony is permitted, it should be limited to opinions which are elicited and explored through hypothetical questioning. See, e.g., *Cooke v. City of Stockton*, 2017 WL 6447999 (E.D. Cal. December 18, 2017), *15; *Engman v. City of Ontario*, 2011 WL 2463178, *7 (C.D. Cal. June 20, 2011); *Valtierra v. City of Los Angeles*, 99 F.Supp.3d 1190, 1198 (C.D. Cal. 2015) (excluding expert testimony that "the use of force was 'excessive' or 'unreasonable,' under the circumstances," but allowing expert's opinions to "be explored through hypothetical questioning so as to avoid invading the province of the jury").

III. CONCLUSION

The County requests that all expert witnesses and expert witness testimony be excluded from trial. To the extent expert witness testimony is allowed, it should be limited to opinions which are elicited and explored through hypothetical questioning. The County requests that Plaintiff's MIL 4 be heard and adjudicated at the same time as the County's MIL 3.

Dated: February 8, 2024

Respectfully submitted,

ORBACH HUFF + HENDERSON LLP

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COUNTY OF ALAMEDA